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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/568,790

01/03/2007

Frank S. Glaug

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7590

08/12/2009

AMSTER, ROTHSTEIN & EBENSTEIN LLP  
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EXAMINER

REICHLE, KARIN M

ART UNIT

PAPER NUMBER

3761

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DELIVERY MODE

08/12/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/568,790	<b>Applicant(s)</b> GLAUG ET AL.	
	<b>Examiner</b> Karin M. Reichle	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3,6-10,16 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,6-10,16 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 January 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7-13-09 has been entered.

### ***Specification***

#### ***Drawings***

2. Drawings were received on 11-14-08. These drawings are still not approved. The replacement drawings are of poor quality, e.g. lines and numbers faint, obscured, no page number. Therefore see the next paragraph.

3. The drawings are still objected to because Figure 1 should be labeled "PRIOR ART", see page 3, lines 7-8. The Figures are not consistent with the description thereof, i.e. show exploded partial cross sections but not described as such. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as

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“amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Description***

4. The abstract of the disclosure is still objected to because the abstract, i.e. a replacement paragraph of the PCT abstract, is still not a clean copy. A clean copy, i.e. a separate page with just the abstract on it, must be filed prior to allowance, if any. Correction is required. See MPEP § 608.01(b).

5. The disclosure is objected to because of the following informalities: The Summary of the Invention section, i.e. a description of the claimed invention, and the invention of the claims as now amended, should be commensurate in scope, see MPEP 608.01(d) and 1302.

Appropriate correction is required.

### ***Claim Language Interpretation***

6. The claim language is interpreted in light of the definitions at page 4, lines 5-8 and 32-35 (note with regard to the latter that it refers to a core). Any terminology which is not explicitly defined will be interpreted in light of its usual, e.g. dictionary, definition. Claims 10 and 16 are product by process claims, see MPEP 2113, i.e. “[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted)”. However, note page 6, lines 6-8 with regard to the end product of such product by process claims. With regard to claims 3, and 8, see page 8, lines 1-5 of the instant application. It is noted that the claim language added to claims 1 and 16 do not require the variation of the concentration of the superabsorbent in any particular manner, e.g. in a particular pattern, gradually, consistently, only that the concentration is the highest at a portion closet to the barrier layer. It is also noted that the extent of such a portion relative to the overall core thickness has not been set forth, e.g. not required to be only an exterior face of the core.

### ***Claim Objections***

7. Claims 1, 3, 6-10 and 16-17 are objected to because of the following informalities: In claim 1, the fourth line from the bottom appears to be missing a word or words. This also applies to similar language in claim 16. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

8. Claims 1, 3, 6-10 and 16-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1 and 16, a positive structural antecedent basis for “the thickness of the core”, fourth and fourth-fifth lines from the bottom, respectively, should be set forth.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 3, 6-10 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trokhan et al ‘747 (and thereby, by incorporation Wells ‘459, Nystrand ‘225, Trokhan ‘480 and Osborn III ‘264).

Claim 1: See Claim Language Interpretation section supra, hereinafter referred to as CLI, and, e.g., ‘747 at the entire document, esp. col. 11, lines 9-30 (and thereby ‘264 by incorporation at the entire document, esp. the Figures and col. 3, lines 47 et seq, col. 8, lines 11-15 and 46-56, the paragraph bridging cols. 8-9 and the last full paragraph of col. 9), ‘747 esp. at the Figures, col. 1, lines 12-17, col. 2, lines 23-34, col. 3, lines 41-62, col. 4, lines 5-12, col. 4, lines 18-36 (and thereby ‘480, by incorporation, at the entire document, esp. at the Figures, col. 2, line 18-21,

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col. 3, lines 40-63, col. 18, lines 34-36, col. 19, lines 1-13, and col. 21, lines 21-24, ‘459 at the entire document, esp. the Figures, abstract and title and ‘225 at the entire document, esp. at the Figures, col. 1, lines 11-12 and the abstract), ‘747 esp. at col. 4, line 45-col. 9, line 28, i.e. ‘747 teaches an absorbent article, col. 11, lines 9-30 and thereby ‘264, comprising a barrier layer, 16 in ‘264, a cover layer, 25 in ‘264, extending substantially parallel to the barrier layer, and an osmotic absorbent polymer 24 interposed between the cover layer and the barrier layer, the absorbent polymer being adhered to the article in a pattern, see Figures and cited portions of ‘747 and ‘264, configured to distribute fluid in the absorbent article, see, e.g., col. 2, lines 24-34 of ‘747, wherein at least one portion of the absorbent article extending essentially completely across the absorbent article is substantially devoid of the absorbent polymer, see 34 in Figures of ‘747, 83 in Figures of ‘480, between 44 in Figures of ‘459 and between 17 in the Figures of ‘225. Claim 1 further requires the absorbent polymer be a superabsorbent polymer, see, e.g., page 4, lines 5-16 and page 6, line 5-page 7, line 5 of the instant application. See also the cited portions of ‘747. Therefore, the absorbent polymer 24 of ‘747 is a “superabsorbent polymer” as claimed, or since the absorbent polymer of ‘747 includes the same structure and functions in the same manner as the absorbent polymer considered a “superabsorbent polymer” as disclosed, there is sufficient factual evidence for one to conclude that such absorbent polymer also obviously performs as a “superabsorbent” polymer, i.e. includes the function, capability or property claimed of such polymer.

Claim 1 also requires a core, 20 of ‘747, see col. 11, lines 20-21, be interposed between the cover layer and the barrier layer, see discussion supra, and the “superabsorbent polymer”, see discussion supra, be applied to the core in the pattern, e.g. see the Figures and cited portions

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of '747, '480, '459 and '255. Claim 1 additionally requires the core be selected from the group consisting of tissue and paper towel sheet, see col. 4, lines 18-36 of '747 and, e.g., '480 at col. 2, lines 17-22, col. 18, lines 34-35 and col. 21, lines 21-24, '459 at the abstract and '225 at the abstract and col. 1, lines 11-12. Finally, claim 1 now requires 1) the concentration of the superabsorbent polymer varying through the thickness of the core, see CLI, and/or with 2) the highest concentration of the super absorbent polymer being at a portion of the core closest to the barrier layer. With regard to 1) see '747 at, e.g., Figure 2, col. 4, lines 5-12, col. 7, lines 39-47 and col. 9, lines 43-48. With regard to 2), while '747 at the cited portions, e.g. col. 4, lines 5-24 and col. 9, lines 1-8, and '264, e.g. col. 8, lines 1-5 and 46-56 teach the highest concentration on the regions/raised portions 36, 38, such region/raised portions having a higher density/being localized densified relative to other regions/portions devoid of polymer, fluid movement from less densified regions to more densified regions, such absorbent structure being used as a core in an article, e.g., of '264, and the desire of such article, e.g. of '264, to prevent rewet and promote vertical absorption in the core away from the wearer, it is not explicitly taught that the regions/elevated portions/higher density portions/locally densified portions of the absorbent structure are closest to a barrier layer of an absorbent article when used as a core therein. However, to employ the regions/elevated portions/higher density portions/locally densified portions of the absorbent structure as taught by the prior art closest to the barrier layer of an absorbent article when used as a core therein would be obvious to one of ordinary skill in the art in view of the recognition that such would to prevent rewet and promote vertical absorption in the core away from the wearer due to the fluid movement from low density regions portions to high density regions taught by such prior art and the prior arts desire to so prevent rewet and



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promote vertical absorption in the core away from the wearer. It is further noted that such positioning of the polymer would obviously better prevent gel blocking by such polymer closest to the cover layer, i.e. adjacent the user's body, permitting fluid absorption into the core, i.e. more efficient utilization of the entire capacity of the core and the desire by '747 for such, see col. 2, lines 23-29.

Claim 3: This claim requires the pattern be configured to increase resistance of the absorbent article to tearing with the at least one portion of the absorbent article extending essentially completely across the absorbent article being more resistant to tearing than at least one other portion of the absorbent article, i.e. capabilities, functions or properties of the pattern. See, CLI, e.g. page 8, lines 1-5 of the instant application. While '747 does not explicitly teach such, since '747 teaches the claimed pattern as well as such functioning similarly to that disclosed at page 8, lines 1-5 of the instant application, at the very least, there is sufficient factual evidence for one to conclude that such '747 pattern also obviously increases resistance to tearing of one completely extending portion than at least one other portion, i.e. includes the function, capability or property claimed of such same pattern. Note also, e.g., the continuity/discontinuity of different densities in different directions of Figure 1 of '747, Figure 8 of '480, Figure 5 of '459 and Figures 3 and 4 of '225 and the varying densities in the thickness direction of Figure 2 of '747 and Figure 9 of '480 and 24 in Figure 2 of '747 and col. 7, lines 39-47 and col. 9, lines 43-48 of '747 and, e.g., that a continuous straight line of low density is less tear resistant than, e.g., a continuous curved line of such same low density or a continuous straight line of higher density or including higher density portions also, etc.

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Claim 6: The barrier layer comprises a material selected from the group consisting of polyethylene, polypropylene, copolymers of polyethylene and polypropylene, polyester, and bi-component fibers, see last paragraph of col. 9 of '264.

Claim 7: The cover layer comprises one or both of a non-woven material and an apertured film, see paragraph bridging cols. 8-9 of '264.

Claim 8: The pattern forms at least one region including the superabsorbent polymer and at least one continuous zone that is substantially devoid of the superabsorbent polymer, the continuous zone having greater tear resistance than the region including the superabsorbent polymer, see discussion of claim 3 supra.

Claim 9: The pattern is selected from the group consisting of a spiral pattern, a melt blown pattern, a multi-tracked pattern, a full coat pattern, a zoned spray pattern, and an intermittent pattern, see Figures of '480, '459, '225 and 747 and the cited portions thereof, e.g. an intermittent pattern.

Claim 10: The superabsorbent polymer is formed from one or more of a polymer in liquid form and a polymer formed by conversion of a superabsorbent precursor, the superabsorbent precursor comprising one or both of a monomer and an oligomer, see CLI, discussion of claims supra and '747 at col. 4, line 46-col. 9, line 29, e.g. the end product of '747 includes a superabsorbent polymer adhered thereto and/or the superabsorbent polymer is formed from a polymer in liquid form or formed by conversion of a precursor comprising one or both of a monomer and an oligomer.

Claims 16-17: See discussion of claim 1 and the CLI supra.

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***Response to Arguments***

11. Applicant's remarks have been carefully considered but are either deemed moot in that the issue discussed has not been repeated or deemed not persuasive for the reasons set forth supra. It is noted that Applicant did not address the abstract issue.

***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Karin M. Reichle/  
Primary Examiner, Art Unit 3761

August 10, 2009

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